

either wholly within an agency or between agencies.

Retained rate means a rate above the maximum rate of the employee's highest applicable rate range that is payable under subpart C of this part.

Temporary promotion means a promotion that has a definite time limitation or is otherwise designated as temporary when the affected employee is informed in advance.

Temporary reassignment means a reassignment that has a definite time limitation or is otherwise designated as temporary when the affected employee is informed in advance.

Where different pay schedules apply means, in the context of applying the geographic conversion rule, that an employee's official worksite is changed to a new location that would cause the employee to lose or gain coverage under a location-based pay schedule if the employee were to remain in the same position of record.

[70 FR 31305, May 31, 2005, as amended at 73 FR 66154, Nov. 7, 2008]

§ 536.104 Reasonable offer.

(a) For the purpose of determining whether grade retention eligibility or entitlement must be terminated under § 536.207 or 536.208, the offer of a position is a reasonable offer if the position's grade is equal to or higher than the retained grade and if all the conditions in paragraph (c) of this section are met. If the offered position is in a different pay system, § 536.105 must be applied to determine whether the grade of the offered position is equal to or greater than the retained grade.

(b) For the purpose of determining whether pay retention eligibility or entitlement must be terminated under § 536.308, the offer of a position is a reasonable offer if the employee's rate of basic pay in the position would be equal to or greater than the rate to which the employee is or would be entitled under the pay retention provisions and if all the conditions in paragraph (c) of this section are met.

(c) An offer of a position must meet the following additional conditions to qualify as a reasonable offer:

(1) The offer must be in writing and must include an official position description of the offered position;

(2) The offer must inform the employee that entitlement to grade or pay retention will terminate if the offer is declined and that the employee may appeal the reasonableness of the offer as provided in § 536.402;

(3) The offered position must be of equal or greater tenure than the employee's position before the action resulting in the grade or pay retention entitlement;

(4) The offered position must be full-time, unless the employee's position immediately before the action resulting in entitlement to grade or pay retention was less than full-time, in which case the offered position must have a work schedule providing for no fewer hours of work per week or per pay period than the position held before the action; and

(5) The offered position must be in the same commuting area as the employee's position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy that requires employee mobility.

§ 536.105 Comparing grades under different pay systems.

(a) *General.* An agency must compare the comparison rates (as defined in § 536.103) of the applicable grades to determine whether a grade of a position is equal to, higher than, or lower than the grade of another position when—

(1) Determining eligibility for grade retention upon movement from a position under a covered pay system to a lower-graded position under a different covered pay system (including determinations under § 536.203 that involve different covered pay systems);

(2) Determining whether grade retention eligibility is lost or grade retention is terminated when an employee is placed in a lower-graded position under a different covered pay system and the action is taken for personal cause or at the employee's request;

(3) Determining whether grade retention eligibility is lost or grade retention is terminated based on movement to a position under a different covered pay system with an equal or higher grade;

(4) Determining whether grade retention eligibility is lost or grade retention is terminated based on declination of a reasonable offer of a position under a different pay system with an equal or higher grade; and

(5) Determining whether pay retention eligibility is lost or a retained rate is terminated when an employee is placed in a lower-graded position under a different covered pay system and the action is taken for personal cause or at the employee's request.

(b) *Geographic conversion.* When comparing positions under paragraph (a) of this section which are stationed in different geographic locations where different pay schedules apply, the comparison rate of the employee's existing position of record (as in effect before the movement to a position in a different pay system) must be determined as if the official worksite of that position of record were the same as the official worksite of the new or offered position of record. Geographic conversion is not necessary for the purpose of comparing grades if an employee is being moved to (or given a reasonable offer of) a position under the same covered pay system (*i.e.*, same grading structure).

[70 FR 31305, May 31, 2005, as amended at 73 FR 66155, Nov. 7, 2008]

Subpart B—Grade Retention

SOURCE: 70 FR 31305, May 31, 2005, unless otherwise noted.

§ 536.201 Mandatory grade retention.

(a) Subject to the requirements in this section and in §§ 536.102 and 536.203, an agency must provide grade retention to an employee who moves from a position under a covered pay system to a lower-graded position under a covered pay system as a result of—

- (1) Reduction in force procedures, or
- (2) A reclassification process.

(b) An agency must apply § 536.105 in determining whether a position under a different covered pay system is a lower-graded position.

(c) An employee's movement to a lower-graded position is considered to be the result of reduction in force procedures when the employee has re-

ceived a specific reduction in force notice and—

(1) The employee is placed in the position offered in the notice; or

(2) The employee is placed in a position other than that offered in the notice but in the same agency, if the position was offered in writing and at the initiative of management.

(d) An employee's movement to a lower-graded position is considered to be the result of a reclassification process when—

(1) The employee remains in his or her position after it is reclassified; or

(2) The employee is placed in a different position in the same agency before the effective date of the reclassification action, if the position was offered in writing and at the initiative of management after the employee received a specific written notice that the position would be reclassified to a lower grade.

[70 FR 31305, May 31, 2005, as amended at 73 FR 66155, Nov. 7, 2008]

§ 536.202 Optional grade retention.

(a) Subject to the requirements in §§ 536.102 and 536.203, an authorized agency official may provide grade retention to an employee moving from a position under a covered pay system to a lower-graded position under a covered pay system when—

(1) Management announces a reorganization or reclassification decision in writing (including a general notice or a specific notice) that may or would affect the employee; and

(2) The employee moves to a lower-graded position (either at the employee's initiative or in response to a management-initiated offer) on or before the date the announced reorganization or reclassification is effected.

(b) An agency must apply § 536.105 in determining whether a position under a different covered pay system is a lower-graded position.

(c) When an employee is offered a position with grade retention under this section in anticipation of a reduction in grade, the agency must inform the employee in writing that acceptance of the position is not required and that declination of the offer will not affect the employee's entitlement to grade retention under § 536.201 if the agency